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COURT DECISIONS PERTAINING TO PUBLIC HEALTH.

A DIGEST OF THE JUDICIAL OPINIONS PUBLISHED IN THE PUBLIC HEALTH REPORTS DURING THE CALENDAR YEAR 1916.

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Judicial opinions pertaining to the public health have been published in the Public Health Reports since May, 1913. The opinions so published before January 1, 1916, were compiled and, with a digest, issued as Reprint from the Public Health Reports No. 342.

The following is a digest of the opinions published in the Public Health Reports during the calendar year 1916, and is a continuation of the digest in Reprint No. 342:

Health Authorities.

Powers of Congress.—The United States Supreme Court decided that Congress has power "to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles and to choose appropriate means to that end," and to forbid the shipment in interstate commerce of drugs which are accompanied by false and fraudulent statements regarding their curative effects. (Seven Cases Eckman's Alterative *v.* United States, P. H. R. Jan. 21, 1916, p. 137.)

Powers of State legislature.—The United States Supreme Court held that a State has power to protect the health of its people and to impose restrictions having reasonable relation to that end. The nature and extent of restrictions of this character are matters for the legislative judgment in defining the policy of the State and the safeguards required. (Price *v.* State of Illinois, P. H. R. Jan. 14, 1916, p. 79.)

The power of the legislature to protect society from disease or epidemics is very broad, but the legislature can not arbitrarily and unnecessarily destroy property, or any substantial interest therein, under the guise of a health regulation. (People *v.* Weiner [Ill.], P. H. R. Apr. 21, 1916, p. 1019.)

Powers of State legislature—Vaccination.—A State legislature has the power to authorize State or local boards of health to require vaccination of teachers and pupils as a condition to their being admitted

to the public schools, even when smallpox is not present. (Hill *v.* Bickers [Ky.], P. H. R. Dec. 29, 1916, p. 3551.)

Powers of State and local boards of health.—In Kentucky the State board of health and the local boards of health are both charged, independently, with the preservation of the public health, and they have power to take such action as, in the exercise of a reasonable discretion, may be deemed necessary to suppress and prevent the spread of any infectious or contagious diseases. (Highland Park School District *v.* McMurtry, P. H. R. Aug. 11, 1916, p. 2173.)

Powers of State and local boards of health—Vaccination.—The Court of Appeals of Kentucky decided that when a smallpox epidemic threatens it is within the power of a State or local board of health to require all children attending school to be vaccinated. (Highland Park School District *v.* McMurtry, P. H. R. Aug. 11, 1916, p. 2173; Hill *v.* Bickers, P. H. R. Dec. 29, 1916, p. 3551.)

Powers of State Board of Health—Injunction.—Under the laws of Oregon, the State board of health has authority to bring suit for an injunction to restrain the continuation of conditions which may endanger the health of the public. (State Board of Health *v.* City of Silverton, P. H. R. Feb. 25, 1916, p. 465.)

Powers of State board of health—Taking of shellfish from contaminated waters.—A Massachusetts law prohibited the taking of shellfish from waters which had been declared by the State board of health to be contaminated by sewage or otherwise. The Supreme Judicial Court of Massachusetts decided that the law was constitutional and valid. (Commonwealth *v.* Feeney, P. H. R. Sept. 1, 1916, p. 2377.)

Powers of cities and of local boards of health.—The Supreme Court of Oregon decided that the right of a State to enjoin a nuisance may be delegated to and exercised by a city or other power especially named for that purpose. (State Board of Health *v.* City of Silverton, P. H. R. Feb. 25, 1916, p. 465.)

Extent of jurisdiction of city board of health.—Under the laws of the State of Nebraska, the power of a city board of health does not extend beyond the limits of the city. (State *v.* Temple, P. H. R. July 21, 1916, p. 1949.)

Employment of attorney by State board of health.—The Supreme Court of Illinois decided that the Illinois State Board of Health was without authority to employ an attorney and that an appropriation for this purpose made by the legislature was void. (Fergus *v.* Russel, P. H. R. Sept. 8, 1916, p. 2466.)

Orders of boards of health—Penalties must be fixed when order is made.—Under the law of the State of New York, local boards of health are authorized to make general and special orders for the protection of the public health and to prescribe and impose penalties for the violation of such orders. The board of health of the village of

Carthage issued an order prohibiting a resident of the city from pumping the contents of his cesspool over the ground, but the board did not prescribe the penalty to be incurred if the order was violated. After the order had been disobeyed, the board fixed the penalty at $50. The New York Court of Appeals decided that the board had no right after the commission of the offense to determine what the penalty should be. (Village of Carthage *v.* Colligan, P. H. R. Apr. 7, 1916, p. 911.)

Liability of city for negligence.—The Supreme Court of Kansas decided that the duty of a municipal corporation to conserve the public health was governmental in its nature, and that a municipality was not liable for injuries inflicted while performing such duty. (Butler *v.* Kansas City, P. H. R. July 14, 1916, p. 1875.)

City not liable for negligence in maintaining hospital.—A patient in a municipal isolation hospital contracted blood poisoning in a wound caused by getting a splinter from the floor in his foot. He sued the municipality, but the Kansas Supreme Court decided that the municipality was not liable. (Butler *v.* Kansas City, P. H. R. July 14, 1916, p. 1875.)

Funds must be provided.—A health officer can not be compelled to perform any duty requiring the expenditure of money if no funds are available for the purpose. (Gould *v.* Keller [S. Dak.], P. H. R. Mar. 10, 1916, p. 649.)

Compensation of county health officer.—The North Carolina law authorized the county board of health to fix the salary of the county superintendent of health, subject to the approval of the board of county commissioners. The board of health of Harnett County elected a superintendent of health and fixed his salary at $600 per annum. The board of county commissioners refused to approve the salary for more than $300 per annum. He brought suit for the salary of $600. The court held that he could not recover more than $300. (Halford *v.* Senter, P. H. R. May 5, 1916, p. 1147.)

Appointment of health officer after certification by municipal civil service commission.—An appointment made in good faith upon certification by the civil service commission is valid even though the commission, because of a mistake, certified the name of the wrong person. (McLaughlin *v.* Green [Kans.], P. H. R. Apr. 14, 1916, p. 967.)

Removal of city health officer.—Under the laws of Kansas a city health commissioner can not be removed from office before the expiration of his term of office except upon charges preferred in writing for misconduct or failure to perform his duty. (McLaughlin *v.* Green, P. H. R. Apr. 14, 1916, p. 967.)

Discharge of employee of health department.—The Supreme Court of the State of Washington decided that an employee of a city health

department who had been discharged without compliance with the civil service rules could recover from the city his wages for the period during which he was unlawfully refused employment. (Roe *v.* Seattle, P. H. R. May 26, 1916, p. 1337.)

Laws, Ordinances, and Regulations—Validity and Effect.

To be valid as a health measure a statute or ordinance must provide real protection to the public health.—A provision in an Illinois law which prohibited absolutely the use of second hand material in making mattresses, bed comforters, or quilts for sale was declared unconstitutional on the ground that such prohibition was not necessary to protect health, which, the evidence indicated, could be safeguarded by sterilization. (People *v.* Weiner, P. H. R. Apr. 21, 1916, p. 1019.)

An ordinance of Nashville, N. C., prohibited the erection of a privy or stable nearer to a neighbor's residence than it was to the owner's. The North Carolina Supreme Court decided that the ordinance was void, as it failed to protect the health of the inhabitants of the town, "as under it stables may be kept with impunity obnoxiously near any number of dwellings if they are equally as near the dwelling of the owner of the stables. Thus, it is put within the power of the owner to annoy his neighbor at will if he is willing to endure the same annoyance himself." (State *v.* Bass, P. H. R. Aug. 4, 1916, p. 2115.)

Effect of a valid ordinance.—An ordinance duly passed in the exercise of a power delegated to a municipality amounts to a local law and is just as binding and obligatory as if it had been adopted by the legislature itself. (Mayor and Council of Baltimore *v.* Hampton Court Co., P. H. R. Jan. 14, 1916, p. 83.)

Subordinate city board can not nullify an ordinance of the city.—The municipality itself may, by ordinance, amend, alter, or repeal an ordinance; but a board, department, or commission of the municipal government can not, directly or indirectly, change the effect of an ordinance. (Mayor and Council of Baltimore *v.* Hampton Court Co., P. H. R. Jan. 14, 1916, p. 83.)

Ordinances must be reasonable and not unnecessarily burdensome.—An ordinance which prohibits the placing of tin cans, manure, ashes, or rubbish in a street or alley, or permitting such articles or substances to remain on a lot, is unreasonable and void, because the ordinance is unnecessarily burdensome and it makes no distinction between conditions which are harmful and those which would not affect health or comfort. (City of Goodland *v.* Popejoy [Kans.], P. H. R. Sept. 8, 1916, p. 2465.)

City ordinance made more strict than State regulation.—The power of a city to regulate health matters is derived from the State, and a city can not enact an ordinance which conflicts with or will operate

to nullify a State law. But a city ordinance is not necessarily inconsistent with the State law on the same subject because the city provides for greater restrictions or makes higher standards than are provided or made by statute. (Kansas City *v.* Henre [Kans.], P. H. R. June 9, 1916, p. 1499.)

Classifications must be reasonable.—Municipal rules must be reasonable; and a classification of apartment houses which excludes the inhabitants of certain apartments from the benefits of the removal of ashes because of the number of stories in the buildings and the fact that they have elevators is arbitrary and unreasonable. (Mayor and Council of Baltimore *v.* Hampton Court Co., P. H. R. Jan. 14, 1916, p. 83.)

Ordinance not enforceable if necessary funds are not available.—A health officer can not be compelled to enforce an ordinance if the necessary funds are not provided. (Gould *v.* Keller [S. Dak.], P. H. R. Mar. 10, 1916, p. 649.)

Regulations of municipal board of health not valid outside of the municipality.—The board of health of the city of St. Paul, Nebr., adopted a regulation making it unlawful to maintain a slaughterhouse outside of the city but within a certain distance of the city limits. The court held that under the laws of Nebraska the regulation was not valid, as the power of the board of health did not extend beyond the city limits. (State *v.* Temple, P. H. R. July 21, 1916, p. 1949.)

Penalties—Must be fixed when order is made.—A law of the State of New York authorizes local boards of health to issue orders when necessary to protect the public health, and to fix the penalties for violations of such orders. The Court of Appeals of New York decided that the penalties must be fixed by the board of health at the time the order is made. (Village of Carthage *v.* Colligan, P. H. R. Apr. 7, 1916, p. 911.)

License—Discrimination.—An ordinance which imposes a license tax upon milk dealers is not void because it exempts from its provisions grocery stores selling milk where the grocery stores pay a license tax covering their entire business. (City of Newport *v.* French Bros. Bauer Co. [Ky.], P. H. R. Sept. 29, 1916, p. 2727.)

Sterilization may be required.—A law of Illinois requiring that mattresses, comforters, or quilts remade or renovated for the use of the owners must be sterilized does not violate any constitutional provision and is a proper exercise of the police power. (People *v.* Weiner, P. H. R. Apr. 21, 1916, p. 1019.)

Ashes—Removal.—City ordinances required the commissioner of street cleaning to collect garbage, ashes, and refuse from dwellings and other places in the city of Baltimore. The city board of estimates directed the commissioner of street cleaning to discontinue the

collection of ashes from hotels, certain apartment houses, office buildings, and other large structures. The court held that this action was beyond the power of the board, and issued an injunction requiring the commissioner of street cleaning to carry out the provisions of the ordinance and prohibiting the board of estimates from interfering with him in the performance of his duties. (Mayor and Council of Baltimore *v.* Hampton Court Co., P. H. R. Jan. 14, 1916, p. 83.)

Decisions Relating to Certain Communicable Diseases.

Diphtheria—Diagnosis.—A physician is not liable for damages for failure to correctly diagnose a case of diphtheria unless he has been negligent or has displayed a lack of skill in his profession. (Hrubes *v.* Faber [Wis.], P. H. R. Sept. 8, 1916, p. 2466.)

Plague—Prevention.—Rat-proofing ordinance held valid. (New Orleans *v.* Beck [La.], P. H. R. June 2, 1916, p. 1437.)

Rabies—Prevention—Ordinance authorizing destruction of dogs not valid.—The Supreme Court of Oregon decided that an ordinance which provided for destroying impounded dogs without a judicial hearing, and in some cases without notice to the owners, was void as authorizing the taking of property without due process of law. (Rose *v.* Salem, P. H. R. Feb. 4, 1916, p. 272.)

Smallpox vaccination.—Boards of health in Kentucky have power to require the vaccination of school children. (Highland Park School District *v.* McMurtry, P. H. R. Aug. 11, 1916, p. 2173; Hill *v.* Bickers, P. H. R. Dec. 29, 1916, p. 3551.)

Trichinosis.—Damages awarded against meat packer. (Catani *v.* Swift & Co. [Pa.], P. H. R. June 23, 1916, p. 1646.)

Damages awarded against dealer. (Rinaldi *v.* Mohican Co. [N. Y.], P. H. R. July 7, 1916, p. 1793.)

Typhoid fever—Evidence required to prove source of infection.—A city dump, where human excrement and bodies of dead animals were deposited, was located about 1,940 feet from plaintiff's dwelling. Members of the plaintiff's family contracted typhoid fever, but there was no evidence showing the source of the infection or that the bacillus typhosus existed at the dump. The Oklahoma Supreme Court held that the proof was insufficient to show that the dump was the cause of the disease. (City of Duncan *v.* Tidwell, P. H. R. Feb. 18, 1916, p. 396.)

Typhoid fever.—The contracting of typhoid fever by employees from drinking impure water furnished by the employer was held to be an accident arising out of the conduct of the business. (Ætna Life Insurance Co. *v.* Portland Gas & Coke Co., P. H. R. Aug. 18, 1916, p. 2235.)

Venereal diseases—Advertisements regarding cure.—An Oregon law prohibited the publication of advertisements regarding medicines for

the cure of venereal diseases or intended to imply that the advertiser could cure such diseases. The Supreme Court of Oregon decided that the law was constitutional. (State *v.* Hollinshead, P. H. R. Aug. 25, 1916, p. 2300.)

Vaccination.

School children—Power of legislature.—The legislature, in the exercise of its police power, may require or empower a local or administrative authority to require vaccination of teachers and pupils as a condition of their being admitted to the public schools, although smallpox be not prevalent or its outbreak be not apprehended. (Hill *v.* Bickers [Ky.], P. H. R. Dec. 29, 1916, p. 3551.)

School children—Power of boards of health.—In Kentucky, even without a specific delegation of power, local or administrative authorities having control of the schools or general care of the public health are justified, when there is a reasonable apprehension of an outbreak of smallpox, in making vaccination a condition for admission to the public schools. (Hill *v.* Bickers [Ky.], P. H. R. Dec. 29, 1916, p. 3551; Highland Park School District *v.* McMurtry, P. H. R. Aug. 11, 1916, p. 2173.)

Tuberculosis Hospitals—Location.

Properly operated tuberculosis hospital not a menace to health.—The officials of Atlantic County, N. J., decided to establish a tuberculosis hospital in the city of Northfield. The State board of health approved the site selected. The city and residents in the vicinity asked an injunction prohibiting the erection of the hospital. The court decided that the evidence did not show that such an institution, properly operated, was a danger to health, and refused to issue the injunction. (Northfield *v.* Atlantic County, P. H. R. Mar. 24, 1916, p. 791.)

Reduction of market value of adjacent property.—The court of chancery of New Jersey decided that a court is not justified in granting an injunction prohibiting the location of a tuberculosis hospital in a suitable place merely because it may reduce the market value of property in the vicinity. (Northfield *v.* Atlantic County, P. H. R. Mar. 24, 1916, p. 791.)

Requirements of New York law.—In New York it is necessary to comply with the requirements of law relative to notice and hearing before a proposed location for a county tuberculosis hospital is approved. (Buckbee *v.* Biggs, P. H. R. June 23, 1916, p. 1643.)

Membership of board to approve site under New York law.—The New York law made the State commissioner of health and the local health officer a board to consider objections to a proposed location for a county tuberculosis hospital and to approve or disapprove the location. The court held that service on such a board was a duty which could not be delegated by the State commissioner of health,

and that the deputy commissioner of health could not lawfully act as a member of such a board except when he was performing the duties of the commissioner during his absence or inability to act. (Buckbee *v.* Biggs, P. H. R. June 23, 1916, p. 1643.)

Plague Prevention—Rat Proofing of Buildings.

Rat-proofing ordinance.—An ordinance of the city of New Orleans required that "every building, outhouse, and other superstructure, stable, lot, open area, and other premise, sidewalk, street, and alley now constructed or hereafter to be constructed in the city of New Orleans" should be rat proofed in the manner specified in the ordinance. The Supreme Court of Louisiana decided that the ordinance was a "valid and constitutional exercise of the police power of the State in the interest of the safety of the people." (New Orleans *v.* Beck, P. H. R. June 2, 1916, p. 1437; New Orleans *v.* Mangiarisina, P. H. R. June 2, 1916, p. 1440.)

Quarantine.

Removal of patients.—A city ordinance made it the duty of the health officer to remove persons suffering from "any infectious or pestilential disease" to the city hospital; but no hospital had been erected and no funds were provided for the removal or care of patients. Plaintiff asked a writ of mandamus to compel the health officer to remove a smallpox patient from his home, which had been quarantined. The court held that the health officer could not be compelled to remove the patient. (Gould *v.* Keller [S. Dak.], P. H. R. Mar. 10, 1916, p. 649.)

Marriage of Diseased Persons.

Annulment of marriage for fraud in concealing disease—Power of court limited.—The New Jersey Court of Chancery decided that a court of equity can not annul a marriage because of fraudulent concealment by one party of his or her physical condition unless the disease is of such a nature as to render contact seriously dangerous to the other party. (Allen *v.* Allen, P. H. R. Mar. 17, 1916, p. 733.)

Knowledge of disease must be proved.—A wife asked the New Jersey Court of Chancery to annul her marriage to the defendant on the ground that he had fraudulently concealed from her the fact that at the time of the marriage he was suffering from syphilis. The court refused to annul the marriage, holding that the evidence was not sufficient to prove that the defendant knew when the marriage occurred that he was suffering from syphilis. (Kaufman *v.* Kaufman, P. H. R. Oct. 13, 1916, p. 2901.)

Proof must be clear.—In order to enable a court of equity to annul a marriage on the ground of fraud in concealing disease, the proof of

the diseased condition of the defendant must be clear and convincing. (Allen *v.* Allen [N. J.], P. H. R. Mar. 17, 1916, p. 733.)

Syphilis.—The fact that one party to a marriage was afflicted with syphilis at the time of the marriage is not sufficient to enable the court to annul the marriage in the absence of a statute authorizing such action. (Kaufman *v.* Kaufman [N. J.], P. H. R. Oct. 13, 1916, p. 2901.)

Concealment of insanity in family.—Plaintiff (the wife) asked the court to annul the marriage on the ground that the husband concealed from her the fact that he was afflicted with a taint of hereditary insanity. Some years after the marriage the husband had become insane. The court refused to annul the marriage because: (1) It was not clearly proved that the insanity was hereditary; and (2) the concealment of insanity in the family was not such a fraud as would justify the court in annulling the marriage. (Allen *v.* Allen [N. J.], P. H. R. Mar. 17, 1916, p. 733.)

Occupational Diseases and Workmen's Compensation Laws.

Connecticut—Occupational diseases not included in the Connecticut law.—The Supreme Court of Errors of Connecticut decided that it was not the intention of the Connecticut Legislature in passing the workmen's compensation law to make provision for paying compensation to workmen suffering from occupational diseases. (Miller *v.* American Steel & Wire Co., P. H. R. Oct. 6, 1916, p. 2797.)

Lead poisoning.—An employee of the American Steel Wire Co. was incapacitated for a short time by lead poisoning which was contracted in the course of his employment. The Supreme Court of Errors of Connecticut decided that he was not entitled to compensation under the law of that State. (Miller *v.* American Steel & Wire Co., P. H. R. Oct. 6, 1916, p. 2797.)

Erysipelas following frostbite.—The death of an insurance solicitor was caused by erysipelas which developed after frostbite. The compensation commissioner of Connecticut found that the injury arose "in the course of and out of his employment," and the court affirmed an award of compensation to his widow. (Larke *v.* Insurance Co., P. H. R. Aug. 25, 1916, p. 2299.)

Massachusetts—Occupational diseases not included in the Massachusetts law.—The Massachusetts workmen's compensation law as construed by the Massachusetts Supreme Judicial Court does not provide for compensation for occupational diseases as such. "Personal injury" is the only ground for compensation. But whatever is rightly described as a "personal injury," if received in the course of and arising out of the employment, becomes the basis for a claim. (In re Madden, P. H. R. July 14, 1916, p. 1877.)

An employee who suffers from disease is not barred from compensation.—Under the Massachusetts law, the fact that an employee is suffering from a disease does not bar the right to compensation even though the injury would not have occurred had the employee been in good health; but the injury must be one which arises out of and in the course of the employment. (In re Madden, P. H. R. July 14, 1916, p. 1877.)

Heart disease.—Under the Massachusetts workmen's compensation law, an employee who has a weak heart and whose work requires exertion which so aggravates and accelerates the disease as to incapacitate the employee is entitled to compensation. (In re Madden, P. H. R. July 14, 1916, p. 1877.)

Pneumonia.—The inhalation of damp smoke and drenching with water, resulting in lobar pneumonia, is a "personal injury" within the meaning of that term as used in the Massachusetts workmen's compensation law. (In re McPhee, P. H. R. Feb. 18, 1916, p. 395.)

Michigan—Occupational diseases not included in the Michigan law.—The Michigan workmen's compensation law does not provide for compensation for all personal injuries suffered by an employee, but for accidental injuries only. (Robbins *v.* Original Gas Engine Co., P. H. R. Sept. 1, 1916, p. 2375.)

Syphilis retarding recovery.—Claimant was injured, and payments were made for some time under the Michigan workmen's compensation law. Recovery was retarded because the claimant was suffering from syphilis. The Michigan Supreme Court decided that it was impossible to determine what part of the period of disability was attributable to the injury and what part was caused by the disease. The order of the industrial accident board directing that payments be continued was affirmed. (Hills *v.* Oval Wood Dish Co., P. H. R. Sept. 29, 1916, p. 2725.)

Gonorrheal infection following an accident.—A piece of steel flew into a workman's eye. Later gonorrheal infection developed and caused serious injury to the eye. The workman was free from the disease when the accident occurred. It was shown that a fellow workman attempted to remove the piece of steel, and the court held that the evidence was sufficient to warrant the finding that the infection was the result of the accident within the meaning of the workmen's compensation law. (Cline *v.* Studebaker Corporation [Mich.], P. H. R. May 12, 1916, p. 1206.)

Hernia.—Hernia which develops after a strain from lifting is the result of an "accident" within the meaning of that term as used in the Michigan workmen's compensation law. A workman who suffers from such an injury in the course of his employment is therefore entitled to compensation. (Bell *v.* Hayes-Ionia Co., P. H. R. Dec.

15, 1916, p. 3434; Robbins *v.* Original Gas Engine Co., P. H. R. Sept. 1, 1916, p. 2375.)

New York—Tuberculosis.—The New York workmen's compensation law provides for compensation for "accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom." The commission decided that a workman who was disabled by getting wet, and "contracted a heavy cold and pleurisy, which developed into pulmonary tuberculosis," was entitled to compensation, and the New York Supreme Court affirmed the decision. (Rist *v.* Larkin & Sangster, P. H. R. June 30, 1916, p. 1719.)

Ivy poisoning.—A workman, while mowing grass, came in contact with poison ivy. He became ill, "blood poisoning" developed, he contracted "congestion of the lungs," and death followed. The New York workmen's compensation commission awarded compensation to his widow, and the New York Supreme Court affirmed the award. (Plass *v.* Central New England Ry. Co., P. H. R. Apr. 14, 1916, p. 969.)

Ohio—Occupational diseases not included in the Ohio law.—The Ohio workmen's compensation law, as construed by the supreme court of the State, does not provide for injuries caused by occupational diseases. (Industrial Commission *v.* Brown, P. H. R. May 19, 1916, p. 1269.)

Lead poisoning.—The Ohio workmen's compensation law of 1911, which provided for compensation to employees "injured in the course of their employment" did not cover cases of lead poisoning contracted in the course of employment. (Industrial Commission *v.* Brown, P. H. R. May 19, 1916, p. 1269.)

Rhode Island—Dizziness resulting from disease.—The Supreme Court of Rhode Island decided that an employee who became "dizzy or unconscious" and was injured by a fall was entitled to compensation under the workmen's compensation law of Rhode Island. (Carroll *v.* What Cheer Stables Co., P. H. R. May 5, 1916, p. 1147.)

Wisconsin—Typhoid fever caused by infected drinking water.—The Wisconsin Supreme Court held that the death of an employee from typhoid fever caused by drinking impure water furnished by his employer was "proximately caused by accident while he was 'performing services growing out of and incidental to his employment'" within the meaning of the Wisconsin workmen's compensation law. (Vennen *v.* New Dells Lumber Co., P. H. R. Feb. 11, 1916, p. 329.)

Milk.

City ordinance requiring higher standards than State regulations.—A city ordinance which provided a higher standard for milk sold in the city than that required by the State regulations and which imposed

more severe penalties for its violation than those imposed for violating the State regulations was held by the Kansas Supreme Court to be reasonable and valid. (Kansas City *v.* Henre, P. H. R. June 9, 1916, p. 1499.)

License—Discrimination.—The Court of Appeals of Kentucky decided that an ordinance which imposes a license tax upon milk dealers is not void because it exempts from its provisions grocery stores selling milk where the grocery stores pay a license tax covering their entire business. (City of Newport *v.* French Bros.-Bauer Co., P. H. R. Sept. 29, 1916, p. 2727.)

Failure to register dairy—Penalty.—A California law required the registration of dairies. The defendant purchased milk from an unregistered dairy and refused to pay for it on the ground that the sale of milk from such a dairy was unlawful. The court held that the only penalty provided by the law for failure to register was fine or imprisonment; that the law did not make the sale of milk from an unregistered dairy unlawful; and that the milk must be paid for. (Luchini *v.* Roux, P. H. R. Sept. 15, 1916, p. 2523.)

Foodstuffs.

Poisons in foodstuffs—Federal pure-food law.—The shipment in interstate commerce of foodstuffs which contain added poisonous or other deleterious ingredients which may render the foodstuffs injurious to health is prohibited by the Federal pure food and drugs law. (Weeks *v.* United States, P. H. R. Mar. 3, 1916, p. 550.)

Arsenic in candy—Federal pure-food law.—Defendant sold and shipped in interstate commerce shellac varnish for use in glazing cheap candies. The shellac contained minute quantities of arsenic. The court held that the question whether or not the small amount of arsenic used would "reasonably have a tendency to injure health" was properly submitted to the jury. (Weeks *v.* United States, P. H. R. Mar. 3, 1916, p. 550.)

Federal laws not always applicable—Original packages.—Unless foodstuffs shipped from one State to another are sold in the original packages, the Federal laws governing interstate commerce do not apply to them in such a way as to exempt them from local laws governing domestic transactions. (Price *v.* Illinois, P. H. R. Jan. 14, 1916, p. 79.)

Boric acid in a food preservative.—The Illinois pure-food law prohibits the sale of food containing added poisonous or other deleterious substances and declares boric acid to be unwholesome and injurious. Another section of the law prohibits the sale of any unwholesome or injurious preservative intended for use in foods. The defendant sold in Illinois a compound containing boric acid, which was intended for use as a preservative of canned fruit and vegetables. The State court

construed the law to prohibit the use of boric acid in a preservative although such preservative was not a food in itself and was not shown to be injurious or unwholesome, and the Supreme Court of the United States adopted this construction. (Price *v.* Illinois, P. H. R. Jan. 14, 1916, p. 79.)

Shellfish from contaminated waters.—The Supreme Judicial Court of Massachusetts upheld a law which prohibited the taking of shellfish from waters which had been declared by the State board of health to be contaminated. (Commonwealth *v.* Feeney, P. H. R. Sept. 1, 1916, p. 2377.)

Implied warranty—New York.—When a dealer sells foodstuffs for immediate consumption there is an implied warranty that the goods are fit for food and are wholesome. (Rinaldi *v.* Mohican Co., P. H. R. July 7, 1916, p. 1793.)

Implied warranty—Massachusetts.—Under the Massachusetts law the implied warranty of a dealer who sells food for immediate consumption does not extend to any person other than the immediate purchaser. (Gearing *v.* Berkson, P. H. R. Dec. 22, 1916, p. 3477.)

Manufacturer liable whether or not he knows that food is unwholesome.—The Supreme Court of Pennsylvania decided that a packer who prepares and sells articles of food which are unwholesome, and which cause disease in the consumer, is liable for injury caused by eating the food whether or not the packer knows that it is unwholesome. (Catani *v.* Swift & Co., P. H. R. June 23, 1916, p. 1646.)

Reason for holding dealer liable for sale of unwholesome foodstuffs.—The rule that a dealer who sells foodstuffs for immediate consumption impliedly warrants them to be wholesome is said to be a harsh one. The reason for the rule is that "in the sale of provisions the vendor has so many more facilities for ascertaining the soundness or unsoundness of the article offered for sale than are possessed by the purchaser that it is much safer to hold the vendor liable than it would be to compel the purchaser to assume the risk." (Rinaldi *v.* Mohican Co. [N. Y.], P. H. R. July 7, 1916, p. 1793.)

Federal pure-food law does not relieve manufacturer from liability.—In Pennsylvania the fact that meat has been inspected and approved by United States inspectors in accordance with the Federal pure-food law does not relieve the manufacturer from liability for injury to the consumer if the meat is infected and unwholesome. (Catani *v.* Swift & Co., P. H. R. June 23, 1916, p. 1646.)

Pork infected with trichinæ.—A Pennsylvania meat packer who sold pork containing trichinæ, the eating of which caused disease, was held liable to the consumer for injury, although the pork was purchased from an intermediate dealer. (Catani *v.* Swift & Co., P. H. R. June 23, 1916, p. 1646.)

A New York woman purchased from a dealer pork which bore the United States Government stamp, but was infected with trichinæ. She and her family were made ill by eating the pork. The court held that the dealer was liable for damages. (Rinaldi *v.* Mohican Co., P. H. R. July 7, 1916, p. 1793.)

Pork—Dealer held liable—Massachusetts.—Mrs. Gearing, acting as the agent of her husband, purchased from the defendants some pork chops. The chops were selected by one of the defendants, who sold them. They were eaten by Mrs. Gearing and her husband, and both were made ill. The findings of fact showed that the defendants had not been guilty of negligence. The court decided that under the laws of Massachusetts Mr. Gearing could recover damages for the breach of an implied warranty that the chops were sound and wholesome, but that the warranty did not extend to any person other than the purchaser. Consequently Mrs. Gearing could not recover. (Gearing *v.* Berkson, P. H. R. Dec. 22, 1916, p. 3477.)

Fish—Packer liable for injury.—The Supreme Court of North Carolina decided that a packer who negligently puts upon the market unwholesome fish is liable for damages for injury caused by eating such fish, even though the fish are purchased by the consumer from an intermediate dealer. (Ward *v.* Morehead City Sea Food Co., P. H. R. Aug. 25, 1916, p. 2302.)

Duty to warn customers when danger is discovered.—When a packer has notice of the fact that fish which have been sold by him are dangerous to health, it is his duty to send warnings in the most expeditious manner in order to prevent, if possible, injury to consumers. (Ward *v.* Morehead City Sea Food Co. [N. C.], P. H. R. Aug. 25, 1916, p. 2302.)

Warning must be given promptly.—The defendant was a packer of fish. After a lot of fish had been shipped and before they were sold by the retail dealer the defendant learned that the eating of other fish from this lot had produced illness. He sent a warning by mail to the dealer who purchased the fish, but did not telegraph. Several persons were made ill and one died as a result of eating the fish. The North Carolina Supreme Court held that the defendant was liable for damages. (Ward *v.* Morehead City Sea Food Co., P. H. R. Aug. 25, 1916, p. 2302.)

Manufacturer not liable unless negligent—Tennessee.—A person who manufactures or puts on the market foodstuffs in packages which are sold by dealers is not liable for injury caused by foreign substances in the foodstuffs unless he has been guilty of some negligent act or omission in the performance of his duty to protect the public. (Crigger *v.* Coca-Cola Bottling Co., P. H. R. Apr. 21, 1916, p. 1022.)

The plaintiff was injured, with symptoms of poisoning, by biting a foreign substance in a plug of tobacco which he purchased from a

dealer. The evidence did not show that the manufacturer had been negligent or that he had knowledge of any fact which would indicate that the tobacco contained any injurious substance. The court held that the manufacturer was not liable. (Liggett & Myers Tobacco Co. *v.* Cannon, P. H. R. Feb. 4, 1916, p. 269.)

Foreign substances in tobacco—Tennessee.—The rule that a manufacturer of foodstuffs is liable to a consumer for injury caused by impurities negligently introduced into the foodstuffs during the process of manufacture does not apply to chewing tobacco. (Liggett & Myers Tobacco Co. *v.* Cannon, P. H. R. Feb. 4, 1916, p. 269.)

Cold storage law not a health measure.—Section 337 of the public health law of the State of New York prohibits the cold storage of foodstuffs for more than 10 months. This law was upheld by the appellate division, first department, of the New York Supreme Court. (P. H. R. Oct. 8, 1915, p. 3042; Reprint No. 342, p. 119.) The city court of Buffalo, N. Y., however, decided that the section was unconstitutional, holding that its purpose and effect were not to protect the public health, but to prevent the owners of foodstuffs from holding them for long periods to force up prices. (People *v.* McFall, P. H. R. Aug. 18, 1916, p. 2235.)

Habit-Forming Drugs.

Harrison antinarcotic law—Section 8.—Section 8 of the Federal act of December 17, 1914, provides: "That it shall be unlawful for any person not registered under the provisions of this act, and who has not paid the special tax provided for by this act, to have in his possession or under his control any of the aforesaid drugs [opium or coca leaves, their salts, derivatives, or preparations]; and such possession or control shall be presumptive evidence of a violation of this section and also of a violation of the provisions of section 1 of this act." (38 Stat. L., 789.)

This provision was variously construed by different United States courts, some judges holding that it was the intention of Congress to prohibit any person in the United States from having possession of the habit-forming drugs specified in the law unless such drugs were procured in accordance with the provisions of the law. Other judges considered that it was beyond the power of Congress to regulate the possession of drugs by individuals in the several States, and construed the law as primarily a revenue measure.

The United States District Court for the Western District of Pennsylvania decided that the statute was a revenue measure and that section 8 was applicable only to persons who manufactured, imported, gave away or dealt in the drugs. The judgment in this case was affirmed by the United States Supreme Court. (United States *v.* Jin Fuey Moy, P. H. R. Jan. 21, 1916, p. 143.)

The United States District Courts for the Western District of Tennessee and the Northern District of Iowa came to practically the same conclusion. (United States *v.* Wilson, P. H. R. Jan. 21, 1916, p. 141; United States *v.* Carney, P. H. R. Apr. 28, 1916, p. 1091.)

The United States Circuit Court of Appeals for the Second Circuit, however, sustained the conviction of a drug addict who had in his possession a quantity of opium, taking the position that section 8 of the law prohibited the possession of opium by any person in the United States who did not come within one of the classes of persons specified in the law as being permitted to have possession of the drugs. (Wilson *v.* United States, P. H. R. May 26, 1916, p. 1335.)

On June 5, 1916, the Supreme Court of the United States decided that the words "any person not registered" as used in the law could not be taken to mean any person in the United States, but must be taken to refer to the class with which the statute undertook to deal; that is, the persons who were required to register by section 1, and that the law did not make it unlawful for persons who did not deal in or handle habit-forming drugs to have such drugs in their possession. (United States *v.* Jin Fuey Moy, P. H. R. June 16, 1916, p. 1561.)

Harrison antinarcotic law—Quantity of drugs prescribed.—The United States District Court for the Northern District of New York decided that a physician who issues a prescription for an unusually large amount of any of the drugs enumerated in the Harrison antinarcotic law and which prescription shows on its face that the quantity prescribed is unreasonable and unusual, is guilty of an offense under the law, unless such prescription indicates the necessity therefor; and the dealer who fills such a prescription or order issued by a physician is guilty of an offense under the law. (United States *v.* Curtis, P. H. R. May 12, 1916, p. 1203.)

Harrison antinarcotic law—Physicians must be engaged in legitimate practice to entitle them to register.—The United States District Court for the Southern District of Ohio decided that a physician who does not personally attend his patients, but in most instances prescribes for them upon their written statements, and who prescribes and distributes to all the same preparation, is not engaged in the legitimate practice of medicine, and is not entitled to register under the Harrison antinarcotic law. (Tucker *v.* Williamson, P. H. R. June 30, 1916, p. 1720.)

Harrison antinarcotic law—Denatured cocaine.—The United States District Court for the Southern District of Ohio decided that the Harrison antinarcotic law does not make an exception of preparations in which the cocaine is in the form of the decomposition products of cocaine and not as cocaine per se, or in which the cocaine is denatured as to its habit-forming and habit-satisfying qualities. The statute prohibits the dispensing of the drug by a person not duly

authorized to do so, and there is no exemption on account of the form in which the drug exists or is prescribed. (Tucker *v.* Williamson, P. H. R. June 30, 1916, p. 1720.)

Harrison antinarcotic law—Section 4.—The United States District Court for the Western District of Tennessee decided that the fourth section of the Harrison antinarcotic law makes it unlawful to ship any of the drugs included in the terms of the law in interstate commerce except under certain circumstances. The court held that a person who induced another person to ship opium from one State to another, neither of the persons having registered under the law, was guilty as a principal of violating the law. (United States *v.* Johnson, P. H. R. Apr. 28, 1916, p. 1089.)

The United States District Court for the Northern District of Ohio held that under section 2 of the Harrison antinarcotic act a physician who gives an order for a drug which is included in the provisions of the act is required either to preserve a duplicate of the order or to keep a record of the amount of the drug dispensed by him. (United States *v.* Charter, P. H. R., Jan. 28, 1916, p. 193.)

Federal opium laws—Possession of smoking opium.—The United States District Court for the Western District of Tennessee decided that under the Federal law of January 17, 1914, the mere possession of opium prepared for smoking constitutes an offense unless it can be shown that the opium was not imported after April 1, 1909. (United States *v.* Johnson, P. H. R. Apr. 28, 1916, p. 1089.)

North Carolina law—Possession evidence of violation of law.—The Supreme Court of North Carolina upheld a State statute which made the possession of cocaine unlawful except under certain specified circumstances, and made its possession prima facie evidence of a violation of the statute. (State *v.* Ross, P. H. R. Mar. 3, 1916, p. 549.)

Oklahoma law—Unlawful selling.—The Criminal Court of Appeals of Oklahoma sustained a conviction under a State statute which prohibited the sale of habit-forming drugs except upon a physician's prescription. (Harrison *v.* State, P. H. R. Dec. 15, 1916, p. 3437.)

New York law—"Dispensing."—A physician who issues a prescription for narcotic drugs does not "dispense" the drugs within the meaning of the New York public-health law. (People *v.* Cohen, P. H. R., Oct. 20, 1916, p. 2951.)

New York law—Physicians' records.—The New York public-health law requires persons who "sell, administer, prescribe, dispense, or dispose of" habit-forming drugs to keep a record of "the name and address of each person to whom such drug is dispensed." A physician issued prescriptions for habit-forming drugs and failed to keep records. The court held that he did not "dispense" them and that he was not required to keep records of such prescriptions. (People *v.* Cohen, P. H. R. Oct. 20, 1916, p. 2951.)

Texas law construed.—The Court of Criminal Appeals of Texas decided that it was not a violation of the Texas law for a physician to prescribe habit-forming drugs for the purpose of alleviating pain or curing a drug habit. (Fyke *v.* State, P. H. R. Sept. 15, 1916, p. 2525.)

Sale to minor—Damages awarded.—Defendants sold heroin in considerable quantities to a boy about 18 years of age, who became a drug addict. The mother of the boy (a widow) brought suit for damages against the defendants. The jury awarded $2,000 compensatory damages and $1,000 punitive damages. The New York Supreme Court held that this verdict was supported by the evidence, and the judgment was affirmed. (Tidd *v.* Skinner, P. H. R. June 16, 1916, p. 1563.)

Drugs and Poisons.

"Patent medicines"—Power of Congress.—Congress has power to condemn the interstate transportation of swindling preparations designed to cheat credulous sufferers, and to make such preparations, accompanied by false and fraudulent statements, illicit with respect to interstate commerce. (Seven Cases Eckman's Alterative *v.* United States, P. H. R. Jan. 21, 1916, p. 137.)

"Patent medicines"—Statements regarding curative properties.—Persons who make or deal in substances or compositions alleged to be curative are in a position to have superior knowledge regarding the curative properties of the substances, and such persons may be held to good faith in their statements. (Seven Cases Eckman's Alterative *v.* United States [U. S. Sup. Ct.], P. H. R. Jan. 21, 1916, p. 137.)

Sherley amendment—Purpose.—The purpose of the Sherley amendment to the Federal pure food and drugs law was to punish false and fraudulent statements regarding the curative or therapeutic effects of drugs or any of their ingredients. (Eleven Gross Packages of Dr. Williams's Pink Pills *v.* United States, P. H. R. Dec. 8, 1916, p. 3383.)

Sherley amendment—Scope.—The United States Supreme Court decided that the amendment of 1912 to the Federal pure food and drugs act (the Sherley amendment) is broad enough to include false and fraudulent statements in circulars contained in the package in which drugs are inclosed. (Seven Cases Eckman's Alterative *v.* United States, P. H. R. Jan. 21, 1916, p. 137.)

Sherley amendment—Meaning of "false and fraudulent."—The phrase "false and fraudulent" as used in the Sherley amendment to the Federal pure food and drugs act must be taken with its accepted legal meaning, and thus it must be found that the statement regarding the curative or therapeutic effect of the article was made with actual intent to deceive—an intent which may be derived from facts and circumstances, but which must be established. (Seven

Cases Eckman's Alterative *v.* United States [U. S. Sup. Ct.], P. H. R. Jan. 21, 1916, p. 137.)

Sherley Amendment—"Package" defined.—The word "package" or its equivalent expression, as used in sections 7 and 8 of the Federal pure food and drugs act, refers to the immediate container of the article which is intended for consumption by the public. (Seven Cases Eckman's Alterative *v.* United States [U. S. Sup. Ct.], P. H. R. Jan. 21, 1916, p. 137.)

Sherley amendment—Forfeiture of "patent medicines."—Several cases of a proprietary remedy were shipped in interstate commerce. In every package containing one of the bottles was a circular with this statement: "Effective as a preventative for pneumonia." "We know it has cured and that it has and will cure tuberculosis." The goods were seized and condemned on the ground that the statement was false and fraudulent. The defense challenged the constitutionality of the Sherley amendment, under which the goods were seized, but the United States Supreme Court held that it was valid. (Seven Cases Eckman's Alterative *v.* United States, P. H. R. Jan. 21, 1916, p. 137.)

The jury found that statements on the label of a medicine which was shipped in interstate commerce were false and were intended to convey false impressions relative to the curative properties of the medicine. The court decided that the medicine was misbranded, and was liable to forfeiture, under the Sherley amendment to the Federal pure food and drugs law. (Eleven Gross Packages of Dr. Williams's Pink Pills *v.* United States, P. H. R. Dec. 8. 1916, p. 3383.)

Sherley amendment—Jury must decide whether statements are false and fraudulent.—It is the province of the jury to determine whether or not statements appearing on the label of a medicine are false and whether such statements are made for the purpose of deceiving the purchaser. (Eleven Gross Packages of Dr. Williams's Pink Pills *v.* United States, P. H. R. Dec. 8, 1916, p. 3383.)

Sherley amendment—Good faith required in statements regarding curative effects of drugs.—If the persons shipping medicines in interstate commerce honestly believe that the statements on the labels are true, the medicines are not misbranded within the meaning of the term "misbranded" as defined in the Sherley amendment. (Eleven Gross Packages of Dr. Williams's Pink Pills *v.* United States, P. H. R. Dec. 8, 1916, p. 3383.)

Drug peddlers—Tax law held valid.—The Supreme Court of California decided that a law requiring each itinerant vendor of drugs to secure a license and pay a semiannual tax of $100 was a valid exercise of the police power of the State and not in conflict with the Federal Constitution. (Ex parte Gilstrap, P. H. R. Feb. 18, 1916, p. 391.)

Drinking Water.

The contracting of typhoid fever from drinking water an "accident."—Employees of the Portland Gas & Coke Co. contracted typhoid fever from drinking water furnished by the company. The Circuit Court of Appeals for the Ninth Judicial Circuit of the United States decided that this was an "accident" and that such an accident was covered by a "contractor's employers' liability policy" which insured against expense resulting from claims for damages on account of bodily injuries accidentally suffered by employees by reason of the business in which the employer was engaged. (Ætna Life Insurance Co. *v.* Portland Gas & Coke Co., P. H. R. Aug. 18, 1916, p. 2235.)

Pollution of reservoir.—Under the laws of Connecticut an injunction may be granted prohibiting the maintenance of a pleasure resort where it is liable to cause pollution of a reservoir used for supplying water, but the proprietor of such resort is entitled to damages even when he had notice before the resort was established. (Rockville Water & Aqueduct Co. *v.* Koelsch, P. H. R. July 28, 1916, p. 2031.)

Company furnishing impure water can not collect water rates.—The New Castle Water Co. was required by its contract with the city of New Castle, Pa., to furnish pure and wholesome water to the inhabitants of the city. During a period of about a month and a half the water was unfit for domestic use. The Supreme Court of Pennsylvania affirmed a decree restraining the water company from collecting from domestic consumers for more than half of the quarter year during part of which the water was impure. (City of New Castle *v.* New Castle Water Co., P. H. R. Mar. 31, 1916, p. 859.)

Sewage Disposal—Pollution of Streams.

Damages against city.—The New York Supreme Court held that the inhabitants of a city or village collectively have no more right to pollute the waters of a stream than has an individual, and if a city empties its sewage into a stream and injury results to owners of land along the stream, the city is liable for damages. (Luther *v.* Village of Batavia, P. H. R. Jan. 7, 1916, p. 29.)

Damages can be recovered against a city for discharging its sewage into a stream so as to pollute the water of the stream and injure lower property owners. (City of Princeton *v.* Pool [Ky.], P. H. R Dec. 15, 1916, p. 3431.)

Rights of owners of land on stream.—The right of the riparian owner to the natural flow of water substantially unimpaired in volume and purity is declared by the Supreme Court of Wisconsin to be a right of great value and one which the law recognizes and protects. (Johns *v.* City of Platteville, P. H. R. Dec. 8, 1916, p. 3385.)

Injunction against city.—The New York Supreme Court held that a city or village might be restrained by injunction from discharging its sewage into a stream in such a way as to injure owners of land along the stream, and if the injunction was violated the municipal officers who were responsible for such violation might be punished for contempt. (Luther *v.* Village of Batavia, P. H. R. Jan. 7, 1916, p. 29.)

A city discharged its sewage into a stream, polluting the water, causing annoyance to residents, and lessening the value of the property of the complainant. The stream was the natural outlet for the sewage of the city, and the evidence showed that it was possible to discharge the sewage into the stream in such a manner as not materially to injure the value of the land of the complainant. The Kentucky Court of Appeals reversed a decree which prohibited the city from using the stream to carry off its sewage, but intimated that an injunction restraining the city from creating a nuisance would have been proper under the circumstances. (City of Princeton *v.* Pool, P. H. R. Dec. 15, 1916, p. 3431.)

Injunction—Proof necessary.—Suit was brought by the State Board of Health of Oregon to prevent the city of Silverton from discharging its sewage into a creek. The court held that the evidence did not show that the pollution of the stream was sufficient to create a menace to health, and for this reason the suit was dismissed. (State Board of Health *v.* City of Silverton, P. H. R. Feb. 25, 1916, p. 465.)

Quantity of sewage.—The mere discharge of sewage into a stream will not give a right of action. It is only when the quantity becomes great enough to injure persons that a liability is created. (McKinney *v.* Trustees of Emory and Henry College [Va.], P. H. R. Apr. 14, 1916, p. 970.)

What constitutes pollution.—Any pollution of a stream which is sufficient to foul the water or to impair its value for the ordinary purposes of life, or anything which renders the water less wholesome than when in its ordinary state, or which renders it offensive to taste or smell, or which is naturally calculated to excite disgust in those using the water will constitute a nuisance which a court of equity will enjoin or for which a lower riparian owner injured thereby is entitled to redress. (McKinney *v.* Trustees of Emory and Henry College [Va.], P. H. R. Apr. 14, 1916, p. 970.)

Menace to health.—The State Board of Health of Oregon brought suit to prevent the city of Silverton from discharging its sewage into a creek, alleging that the action of the city was a menace to the public health of the State. The Supreme Court of Oregon held that the evidence which had been introduced was not sufficient to show that

the public health was endangered. (State Board of Health *v.* City of Silverton, P. H. R. Feb. 25, 1916, p. 465.)

No recovery for pollution from natural drainage.—When the natural surface drainage rendered the water of the stream unfit for use before the city discharged its sewage into the stream, damages could not be recovered against the city on the ground that the water could not be used after sewers were constructed. (City of Princeton *v.* Pool [Ky.], P. H. R. Dec. 15, 1916, p. 3431.)

Law authorizing sewer system does not authorize the creation of a nuisance.—According to the Supreme Court of Wisconsin, legislative authority to install a sewer system carries no implication of authority to create or maintain a nuisance, and if a nuisance be created by a city, the same remedies may be invoked as if the proprietor were an individual. (Johns *v.* City of Platteville, P. H. R. Dec. 8, 1916, p. 3385.)

Legislative authority to discharge sewage into a stream does not justify a city in creating a nuisance or in inflicting injuries which amount to the taking of property in a constitutional sense unless the city has acquired the right by condemnation and the payment of compensation. (State Board of Health *v.* City of Silverton [Oreg.], P. H. R. Feb. 25, 1916, p. 465.)

Distinction between navigable and small streams.—With legislative authority a city may discharge sewage into navigable or tidal streams if done in a proper manner, but it is doubtful if the legislature can authorize such use of a stream the bed and banks of which are in private ownership. (State Board of Health *v.* City of Silverton [Oreg.], P. H. R. Feb. 25, 1916, p. 465.)

Time when suit must be begun.—Under the Kentucky statute limiting the time within which suits must be brought, damages can be recovered for pollution of streams if the injury was done within five years before the institution of the suit. (City of Princeton *v.* Pool, P. H. R. Dec. 15, 1916, p. 3431.)

The statute of Virginia required that such actions be brought within five years after the right of action accrued. Suit was begun within five years after sewage was discharged into the stream in sufficient quantity to work injury, but more than five years after the time when the first sewer was constructed. The Supreme Court of Virginia decided that the suit was begun in time. (McKinney *v.* Trustees of Emory and Henry College, P. H. R. Apr. 14, 1916, p. 970.)

Power of State board of health.—The Supreme Court of Oregon decided that the right of the State to enjoin a city from polluting a stream may be delegated to and exercised by the State board of health. (State Board of Health *v.* City of Silverton, P. H. R. Feb. 25, 1916, p. 465.)

Damage to oyster beds.—The Supreme Court of Appeals of Virginia decided that a municipality has the right to discharge sewage into tidal waters, subject to the control of the State legislature, and a person who leases oyster beds from the State with knowledge of the polluted condition of the beds can not recover damages from the municipality because of such pollution. (City of Hampton *v.* Watson, P. H. R. Aug. 4, 1916, p. 2113.)

Damages and injunction against college.—A college constructed a sewer system which discharged into a small stream and polluted the water. Suit was brought by an owner of land on the stream. The court decided that the complainant was entitled to an injunction and to damages for the injury inflicted. (McKinney *v.* Trustees of Emory and Henry College [Va.], P. H. R. Apr. 14, 1916, p. 970.)